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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5171 OF 2004

Smt.Anuya Anil Patil — Petitioner
versus
Anil H. Patil — Respondent

Mr.Prashant Patil for petitioner.
Mr.Suresh Bhosle for respondent.

CORAM : A.S.OKA, J.

DATE : 25th June 2007

PC :

1. Heard advocates appearing for the parties. One of the objections raised by the respondent is that for challenging the impugned order, an appeal under section 19(1) of the Family Courts Act, 1984 will be maintainable.

2. With a view to appreciate the objection raised by the respondent, it will be necessary to briefly refer to the facts of the case. The petitioner is the wife and the respondent is the husband. The petitioner-wife filed a petition for divorce under section 13(1)(i) of the Hindu Marriage Act, 1955. In the said petition, on

24th July 2003, consent terms were filed by the parties. The consent terms record that the parties have withdrawn all the allegations made against each other. The consent terms provide for various aspects such as payment of maintenance etc.. By the consent terms, parties agreed to take a divorce by mutual consent under section 13-B of the said Act of 1955. On 6th October 2003, the petitioner applied before the Family Court by filing an application at Exhibit-22 contending that when she signed the consent terms neither her advocate nor any of her close relative was present with her and she was alone. She alleged that she was mentally disturbed and, therefore, she could not take proper decision. Her allegation is that as she was very depressed, she was not in a position to understand as to what she was doing. The petitioner, therefore, submitted that she wants to withdraw her consent.

3. By the judgment and order dated 14th April 2004 the learned Judge of the Family Court rejected the application made by the petitioner at Exhibit-22 seeking permission to withdraw her consent. By the said order, the learned Principal Judge proceeded to pass a decree of

divorce by mutual consent.

4. The learned advocate for the petitioner submitted that sub section 2 of section 19 of the Family Courts Act, 1984 (hereinafter referred to as "the said Act of 1984") provides that no appeal shall be allowed from a decree or order passed by the Family Court with the consent of the parties. He submitted that as the decree of divorce has been purportedly passed by the Family Court on the basis of the consent terms, an appeal under sub section 1 of section 19 of the said Act of 1984 will not be maintainable.

5. By making an application at Exhibit-22, a contention has been raised by the petitioner that when she signed the consent terms she was mentally depressed and was mentally disturbed. She has stated that she was not in a position to understand as to what she was doing. Thus, the contention which is raised is that there was no proper consent granted by her. By the impugned order, the learned Principal Judge has rejected the application at Exhibit-22 and has declined permission to the petitioner to withdraw her consent. Insofar as this order is concerned, surely an appeal will lie under sub section 1 of

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section 19 of the said Act as the said order cannot be termed as an interlocutory order. The latter part of the impugned order is merely a consequence of the order on application at Exhibit-22. Moreover, the petitioner is contending that her consent was not voluntary. Her application was for withdrawal of the consent. The very fact of giving a valid consent is being disputed by the petitioner.

6. Considering the nature of the order, the bar created by sub section 2 of section 19 will not apply. Hence, a statutory remedy of preferring an appeal u/s 19(1) of the said Act of 1984 is available to the petitioner. Considering the availability of a statutory remedy, this petition under Article 227 of the Constitution of India need not be entertained and the same is rejected by keeping the remedy of the petitioner open. All contentions of the parties on merits are expressly kept open.

(A.S.OKA, J.)